

Mail Stop Interference  
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Paper 1

Filed October 6, 2006

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Stryker Corporation,  
Junior Party  
(Patent 5,266,683,  
Inventors: Hermann Oppermann, Engin Ozkaynak, Thangavel Kuberasampath,  
David C. Rueger, Roy H.L. Pang),

v.

Genetics Institute, LLC,  
Senior Party  
(Application 08/319,831,  
Inventors: Rodney M. Hewick, Jack H. Wang,  
John M. Wozney, Anthony J. Celeste).

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Patent Interference 105,508 (RES)  
(Technology Center 1600)

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**DECLARATION - Bd.R. 203(b)<sup>1</sup>**

**Part A. Declaration of interference**

An interference is declared (35 U.S.C. § 135(a)) between the above-identified parties. Details of the application(s), patent (if any), reissue application (if any), count and claims designated as corresponding or as not corresponding to the count appear in Parts E and F of this DECLARATION.

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<sup>1</sup> "Bd.R. x" may be used as shorthand for "37 C.F.R. § 41.x". 69 Fed. Reg. 49960, 49961 (12 Aug. 2004).

**Part B. Judge managing the interference**

Administrative Patent Judge Richard E. Schafer has been designated to manage the interference. 37 CFR § 41.104(a).

**Part C. Standing order**

A Trial Section STANDING ORDER [SO] (Paper 2) accompanies this DECLARATION. The STANDING ORDER applies to this interference.

**Part D. Initial conference call**

A telephone conference call to discuss the interference is set for **2:00 p.m. on December 1, 2006** (the Board will initiate the call).

No later than **two business days** prior to the conference call, each party shall file and serve (SO ¶¶ 10.1 & 105) a list of the motions (37 CFR § 41.120 & 204; SO ¶¶ 104.2.1, 120 & 204) the party intends to file.

The time periods for taking action during the motion phase are set in an order accompanying this declaration.

**Part E. Identification and order of the parties**

**Junior Party**

Patent:	5,266,683 based on Application 07/841,646 filed February 21, 1992
Named Inventors:	Hermann Oppermann Engin Ozkaynak Thangavel Kuberasampath David C. Rueger Roy H.L. Pang
Title:	Osteogenic Proteins
Assignee:	Stryker Corporation

**Senior Party**

Application: 08/319,831 filed October 6, 1994

Named inventors: Rodney M. Hewick  
Jack H. Wang  
John M. Wozney  
Anthony J. Celeste

Involved Application: 08/319,831 filed October 6, 1994

Title: Bone and Cartilage Inductive Proteins

Assignee: Genetics Institute, LLC

The senior party is assigned exhibit numbers 1001-1999. The junior party is assigned exhibit numbers 2001-2999. 37 CFR § 41.154(c)(1); SO ¶ 154.2.1. The senior party is responsible for initiating settlement discussions. SO ¶ 126.1.

**Part F. Count and claims of the parties**

Count 1

1. A purified BMP-8 protein or an isolated OP-2 protein comprising the sequence described by residues 1 to 402 of Seq. ID No. 28 of Patent 5,266,683 which protein induces new bone formation in mammals.

The claims of the parties are:

Stryker (Oppermann):	Claims 1-58
Genetics (Hewick):	Claims 1, 26-29

The claims of the parties that correspond to Count 1 are:

Stryker (Oppermann):	Claims 21-26, 27/21, 28, 29, 39, 45-54, 58
Genetics (Hewick):	Claims 1, 26-29

The claims of the parties that do not correspond to Count 1, and therefore are not involved in the interference, are:

Stryker (Oppermann):	Claims 1-20, 27/6, 27/15, 27/18, 30-38, 40-44, 55-57
Genetics (Hewick):	None

The parties are accorded the following benefit for Count 1:

Stryker (Oppermann):	None
Genetics (Hewick):	Application 07/800,364      November 26, 1991

**Part G. Heading to be used on papers**

The following heading must be used on all papers filed in this interference, see SO ¶ 106.1.1:

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**Part H. Order form for requesting file copies**

When requesting copies of files, use of SO Form 4 will greatly expedite processing of the request. Please attach a copy of Parts E and F of this DECLARATION with a hand-drawn circle around the patents and applications for which a copy of a file wrapper is requested.

/Richard E. Schafer/  
Administrative Patent Judge

Enc:

Copy of STANDING ORDER  
Copy of Patent 5,266,683  
Copy of claims of Application 08/319,831

cc (via overnight delivery):

Attorney for Genetics:

Finnegan, Henderson, Farabow, Garrett & Dunner LLP  
901 New York Avenue, NW  
Washington, DC 20001-4413

Attorney for Stryker:

Kirkpatrick & Lockhart Nicholson Graham LLP  
State Street Financial Center  
One Lincoln Street  
Boston, MA 02111-2950

USSN 08/319,831  
Page 3

Page 30, line 3, after "NTA" insert --(SEQ ID NO:41)--.

Page 34, line 4, after "TAT" insert --(SEQ ID NO:42)--.

Page 34, line 11, after "GCC" insert --(SEQ ID NO:43)--.

Page 34, line 23, after "with" and before "ATCC" insert --American Type Culture Collection, 12301 Parklawn Drive, Rockville, Maryland, U.S.A.--

Page 35, line 12, after "CGA" insert --(SEQ ID NO:44)--.

Page 35, Line 27, after "hH38." and before "DNA", insert --Clone hH38 was deposited with the American Type Culture Collection (ATCC), 12301 Parklawn Drive, Rockville, Maryland, U.S.A., under the accession number 69778 on March 30, 1995.--

Page 41-53, delete the Sequence Listing and replace it with the enclosed Sequence Listing pages 41-62.

**In the Claims:**

1. (twice amended) A purified BMP-8 protein characterized by: [comprising at least one of]

(a) the following sequences:

i[a)] Arg-His-Glu-Leu-Tyr-Val-Ser-Phe-Gln-Asp-Leu-Gly-Trp-Leu-Asp-Trp-Val-Ile-Ala-Pro-Gln-Gly-Tyr (SEQ ID NO:1);

ii[b)] Leu-Ser-Ala-Thr-Ser-Val-Leu-Tyr-Tyr-Asp-Ser-Ser-Asn-Asn-Val-Ile-Leu-Arg (SEQ ID NO: 2); and

iii[c)] Ala-Cys-Cys-Ala-Pro-Thr-Lys (SEQ ID NO: 3);

- [d) Thr-Asn-Glu-Leu-Pro-Pro-Pro-Asn-Lys-Leu-Pro-Gly-Ile-Phe-Asp-Asp-Val-His-Gly-Ser-His-Gly-Arg (SEQ ID NO: 4); and
- e) amino acid #4 (Ala) to #142 (His) of SEQ ID NO:14.]
- (b) a molecular weight of 28,000 - 38,000 daltons as determined by sodium dodecyl sulfate polyacrylamide gel electrophoresis; and
- (c) a molecular weight of 14,000 - 20,000 daltons under reducing conditions as determined by sodium dodecyl sulfate polyacrylamide gel electrophoresis said protein being a disulfide linked dimer wherein each of the subunits contains the sequences set forth in part (a) and said protein having the ability to induce the formation of cartilage and/or bone.

Delete claims 2-5, 10-12 and 30.

26. (amended) A pharmaceutical formulation for bone and/or cartilage formation comprising an effective amount of a BMP-8 protein of claim 1 in a pharmaceutically acceptable vehicle.

29. (amended) A pharmaceutical composition for wound healing and tissue repair said composition comprising an effective amount of a BMP-8 protein of claim 1 in a pharmaceutically acceptable vehicle.